

SEP 14 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BENJAMIN MAGANA DELGADO,

Defendant - Appellant.

No. 05-10346

D.C. No. CR-04-00148-HDM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted September 11, 2006**

Before: PREGERSON, T.G. NELSON and GRABER, Circuit Judges.

Benjamin Magana Delgado appeals from the 33-month sentence imposed after his guilty-plea conviction for illegal reentry following deportation, in

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3. Accordingly, appellant's motion to waive oral argument is granted.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Delgado contends that the district court erred by relying too heavily on the advisory United States Sentencing Guidelines and on the government's sentencing memorandum, by failing to consider the sentencing factors under 18 U.S.C. § 3553(a), and by failing to adequately take into account his cultural assimilation . A review of the record establishes that the district did take into account the appropriate sentencing factors, including cultural assimilation, and that the ultimate sentence imposed was not unreasonable. *See United States v. Plouffe*, 445 F.3d 1126, 1131 (9th Cir. 2006); *United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir. 2006).

We reject Delgado's contention that the enhancement for his prior aggravated felony violates *United States v. Booker*, 543 U.S. 220 (2005). *See United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006).

AFFIRMED.